



In Brief

Senate Research Center

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State Hate Crime Laws Seek to Punish Prejudice

On June 7, 1998, in Jasper, Texas, James Byrd, Jr., a 49-year-old African-American man, accepted a ride from three Caucasian males as he walked home from a niece's bridal shower. The men drove Byrd to a wooded area and beat him. They then chained Byrd, who police believe was still alive, to a pickup truck, and dragged him over two miles down a rough road, leaving a trail of blood and body parts. Byrd's head and right arm were torn off and his body shredded. Two of the men reportedly had links to racist prison gangs, and racist literature was found in the apartment the three shared. All three men are charged with capital murder.

In Laramie, Wyoming, on October 9, 1998, 21-year-old Matthew Shepard, unconscious and tied to a fence in near-freezing temperatures, was found by a passing bicyclist. The University of Wyoming student had been severely beaten, his skull so badly fractured that doctors could not operate. After several days in a coma, Shepard died. Police arrested two men who allegedly lured Shepard, who was openly homosexual, out of a local bar by saying they also were gay. They drove Shepard to an isolated area, beat, and robbed him. Although robbery may have been the main motive, police also indicated that Shepard was chosen as a target because of his sexual orientation. His assailants are charged with first degree murder, kidnapping and aggravated robbery.



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These horrific and much-publicized acts have re-ignited the debate regarding the enacting of laws specifically criminalizing or enhancing the penalty for criminal offenses when the perpetrator's actions were motivated by the race, religion, or some other characteristic of the victim. Forty-two states, including Texas, have passed such "hate crime" laws. These laws may: specifically define and criminalize certain conduct as hate crimes; provide for an enhanced penalty or treat it as an aggravating factor when a criminal offense was motivated by bigotry; or both.

This brief examines laws passed throughout the nation which specifically define and criminalize actions motivated by bias based on some characteristic of the victim. It does not cover the many state laws prohibiting certain specific conduct, such as cross burning or vandalizing a religious institution, granting victims of hate crimes a civil action, or requiring a state agency to keep a record of hate crimes. It also does not discuss laws that generally make it a crime to prevent someone from freely exercising or enjoying rights secured by state or federal law or constitutions, unless those laws also specifically refer to a victim's characteristics.

The Debate Over Hate Crime Laws

Under the 1990 Hate Crime Statistics Act, the U.S. Attorney General is authorized to acquire nationwide data about crimes based on race, religion, disability, sexual orientation, or ethnicity. State law enforcement agencies submit this information on a voluntary basis. In 1997, 8,049 hate crimes were reported to the Federal Bureau of Investigation under this act. Of these, 4,710 were race related, with 3,120 incidents against African-Americans and 993 against Caucasians. There were 1,385 reported incidents based on religion; the majority, 1,087, were directed against Jews. There were 1,102 incidents based on the victim's sexual orientation, of which 1,090 were aimed at homosexual or bisexual persons. Of the 836 incidents based on ethnicity or national origin, 491 were directed at Hispanics.

Those who promote the passage of hate crime laws assert that such crimes present a special harm to society, and therefore should be singled out for more severe punishment. Selecting a victim simply based on that person's race, religion, or other characteristic, they argue, results in the intimidation of not just that single victim, but an entire group, seeking to deprive them of full enjoyment and participation in the community. Such laws discourage retaliatory crimes and community unrest that may follow such attacks, and serve as a dramatic message that these crimes are utterly abhorrent to society and will not be tolerated. Hate crimes harm the community as a whole, creating mistrust and divisiveness, and inflict deep emotional harm on the victims.

Opponents argue that it is often hard to determine the motive behind a crime. For example, does the fact that a criminal used a racial slur against a victim during a robbery prove the robbery was actually motivated by racial hatred? They fear that a prosecutor, eager to make a case, might delve into the defendant's background, looking at such irrelevant facts as the defendant's choice of friends, reading material, or past expressions or statements regarding certain groups. Such laws could be used to punish defendants as much for their beliefs as criminal actions, acting as a form of unconstitutional censorship against those who hold unpopular views.

Those opposing such laws also assert that the choice of which groups are included within the protection of a hate crime statute is often arbitrary and political, causing various groups to "compete" for inclusion. For example, opponents point to the fact that even though it is documented that many persons are attacked based on their sexual orientation, most states exclude that category because of arguments that it will grant "special protection" to homosexual men and women. Similarly, gender is often neglected, despite the prevalence of crimes against women, and many states do not include persons with disabilities, although they may be especially vulnerable to criminal acts. Children and the elderly are similarly neglected, as age also is rarely included.

Opponents also assert that existing laws, if ardently enforced, are sufficient to punish all criminal acts. As an example, some point to the fact that the defendants in the incidents described at the beginning of this brief are already charged with capital murder and subject to the death penalty. By creating a special category for hate crimes, opponents argue, a state is inadvertently creating a hierarchy of crime, somehow suggesting that acts committed for other motives are not as "serious" as hate crimes, even though the victims may have suffered as much physical harm or property loss. They also point out that hate crime laws can cut both ways, with Caucasian crime victims being able to use the laws against minorities (In fact, the case in which the U.S. Supreme Court upheld Wisconsin's hate crime law, which is discussed below, concerned an African-American youth convicted of an attack on a Caucasian boy). Proponents of such laws assert that they are necessary for lesser offenses, such as vandalism, where current laws do not impose as severe a penalty. Enhancing the penalties for such lesser crimes may have a deterrent affect, discouraging bias-based vandalism and other misdemeanors. Also, such laws may be used to help persons who commit such crimes, particularly young offenders, by requiring counseling and other intervention.



Hate-crime statutes have been challenged on a number of constitutional grounds:

- **Free speech.** The First Amendment of the U.S. Constitution generally prohibits the government from proscribing free speech, which includes expressive conduct, based upon its message or content. Opponents of hate-crime laws have argued that these statutes violate the First Amendment by punishing persons for their thoughts and beliefs. Another argument is that such laws are unconstitutionally vague and overbroad, because these laws can be unclear as to what conduct is prohibited or when conduct will be considered to have been motivated by bias. Consequently, such laws can inhibit the exercise of free expression, as citizens may refrain from expressing their opinions for fear that their words or actions, even though fully protected under the constitution, could later be used against them.
- **Equal protection.** The Fourteenth Amendment bars states from denying to any person the equal protection of the laws. Those opposing hate crime laws assert that such laws violate equal protection by punishing some criminal offenders more severely than others for the same basic crime. For example, in a state that enhances the penalty for assault when the offense was based upon bias against the victim, a man who severely beats another because of the victim's religion would receive a more severe punishment than one who attacked and inflicted similar injuries on another simply because he was irritated by an innocuous action of his victim. Although both crimes were equally senseless and serious, and the victims suffered similar harm, the defendants are not treated equally because of an arbitrary decision by the state.
- **Due Process.** Under the Fourteenth Amendment, no state shall deprive any person of life, liberty, or property, without due process of law. A law must be specific enough to provide ordinary citizens reasonable notice as to what conduct or activities are subject to criminal sanctions. A law must also provide explicit standards to guide those who will enforce them, avoiding arbitrary and discriminatory enforcement. However, opponents assert that hate crime laws are often vague, leaving it up to the prosecutor to determine whether to charge that the defendant's acts were motivated by bias falling within the purview of the statute and therefore subject to a greater penalty.



Content Versus Conduct; United States Supreme Court Rejects Law Barring Hate Speech but Upholds Law Against Hate Crimes

In two cases, the U.S. Supreme Court addressed many of these constitutional arguments, ultimately upholding one state's hate crime law. In these cases, the court differentiates between content and conduct, noting that while the content of a message is generally protected under the First Amendment, criminal conduct is not.

In *R.A.V. v. St. Paul*, 505 U.S. 377 (1992), the U.S. Supreme Court ruled that St. Paul, Minnesota's Bias-Motivated Crime Ordinance was unconstitutional under the First Amendment. The ordinance prohibited the display of a symbol which one knows or has reason to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender. The defendant was charged under the ordinance after he and several other teenagers had burned a crude cross in the yard of an African-American family. Five justices of the U.S. Supreme Court, with the other four concurring in the judgment, ruled that the ordinance was unconstitutional because it prohibited otherwise permitted speech based solely on its content or message. While agreeing that burning a cross in someone's front yard was reprehensible, the majority asserted that St. Paul had sufficient means at its disposal to prevent such behavior without violating the First Amendment.

The First Amendment generally prevents the government from proscribing speech or expressive conduct because of disapproval of the ideas expressed. Restrictions on the content of expression are permitted only in a few limited areas, where the slight social value of allowing the speech is clearly outweighed by the social interest in order and morality. Prohibitions against pornography or defamation are such narrow exceptions. Even in these cases, the laws are not regulating the content of the expression, but only the way the ideas are communicated. Similarly, expressive conduct

can be banned because of the action it entails, but not the ideas it expresses; for example, the government can punish a person for burning a flag in violation of an ordinance against outdoor fires, but it would be unconstitutional to punish the person for burning the flag because the government dislikes the ideas expressed by such an act. "Fighting words" are excluded from First Amendment protection, not because of the particular idea expressed, but because such words embody a particularly intolerable mode of expressing that idea, such as by inciting violence.

The majority concluded that the ordinance was unconstitutional because it applied only to symbols or displays that insulted or provoked violence on the basis of race, color, creed, religion or gender. Other abusive speech, no matter how vicious, was permissible as long as it did not address these protected groups. Those who used "fighting words" to express hostility toward a political affiliation or homosexuality, for example, were not covered. The problem with the ordinance was not its prohibition of fighting words, but that the prohibition targeted fighting words based only on specific "bias-motivated" content. St. Paul, the majority ruled, was not seeking to bar an especially offensive mode of expression, such as fighting words that communicate ideas in a threatening manner, but instead sought to prohibit only messages of racial, gender, or religious intolerance, regardless of the manner in which they were communicated. This content-based discrimination did not come within any of the specific exceptions to the First Amendment.

St. Paul argued that even if the ordinance barred speech based on its content, this was justified because the law was narrowly tailored to serve a compelling government interest in protecting the basic human rights of groups that have been subjected to discrimination. Although the majority did not doubt that these interests were compelling and the ordinance could promote them, they found that the ordinance was unnecessary, because content-neutral alternatives would have achieved the same goals. For example, an ordinance that did not limit its protection to certain groups would have the same beneficial effect.

Subsequently, the U.S. Supreme Court upheld a state statute enhancing the penalty for criminal offenses motivated by bias. In *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), a unanimous U.S. Supreme Court upheld Section 939.645 of the Wisconsin Statutes, which provides for enhanced penalties for the underlying crime when the defendant intentionally selected the victim or vandalized property because of the race, religion,

color, disability, sexual orientation, national origin, or ancestry of that person or the owner or occupant of that property.

In 1989, an African-American man was accused of inciting the robbery and brutal beating of a young Caucasian boy. The defendant was convicted of aggravated battery. His sentence was enhanced under Section 939.645, based on the jury's finding that he had intentionally selected his victim based on the boy's race.

The defendant alleged that the Wisconsin's penalty-enhancement provision violated the First Amendment. Under the Wisconsin statute, criminal conduct was punished more severely if the offense was motivated by the perpetrator's bias against the victim. The defendant asserted that because the only reason for enhancing his sentence was his discriminatory motive for selecting his victim, the statute violated the First Amendment by punishing him more severely based only on his beliefs.



The court differentiated this case from *R.A.V.*, noting that the ordinance struck down in *R.A.V.* was explicitly directed at expression, while Section 939.45 was aimed at criminal conduct, which is not protected by the First Amendment. The statute singled out bias-inspired conduct for enhancement because this conduct is thought to cause greater individual and societal harm, possibly provoking retaliatory crimes, inflicting distinct emotional harm on victims, and inciting community unrest. The court found the state's desire to redress these perceived harms provided an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases. It is reasonable, stated the court, that those

crimes which are the most destructive of the public safety and happiness should be most severely punished.

The defendant also argued that the statute was unconstitutionally overbroad and would "chill" the exercise of free expression because evidence of the defendant's prior speech or associations may be used to prove that the defendant intentionally selected his victim on account of the victim's protected status. He asserted that people might be discouraged from expressing certain unpopular opinions because if, in the future, they commit a criminal offense covered by the statute, their prior words could be used against them to enhance the sentence. The court rejected this argument, finding it too hypothetical and speculative. The court also noted that evidence of a defendant's previous statements is commonly admitted in criminal trials, subject to the rules of evidence.

Texas

The Texas Hate Crimes Act, effective September 1, 1993, authorizes enhanced punishment in cases in which the crime was motivated by the offender's bias or prejudice. The Act is codified in Article 42.014 of the Texas Code of Criminal Procedure and Section 12.47 of the Texas Penal Code. Article 42.014 provides that if the court determines during the punishment phase of trial that the defendant intentionally selected the victim primarily because of the defendant's bias or prejudice against a group, the court shall make an affirmative finding of that fact, entering such finding into the record. Under Section 12.47, if a court makes such an affirmative finding under Article 42.014, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense.

There has been very little litigation regarding these statutes; a search of Texas case law found two cases, only one being a published opinion, which therefore has legal precedent. In this case, *Martinez v. State*, 980 S.W.2d 662 (Tex. Ct. App. 1998), decided July 22, 1998, a Texas appellate court discussed the application of Article 42.014 of the Code of Criminal Procedure. The court declined to address whether the law was unconstitutionally vague because the defendant had not timely raised this objection in the trial court. However, the court did rule that selecting a victim based on the victim's perceived race was covered under the statute, and that circumstantial evidence, such as a defendant's past prejudicial statements or acts against the victim, could be used to establish that the criminal act was motivated by bias.

The defendant was convicted in the death of his girlfriend's young son. The defendant confessed he may have accidentally hurt the boy when he put the child to bed. The boy's mother testified that the defendant disliked the boy because of the child's dark complexion, from which the defendant inferred the child's father was African-American. She testified to the defendant's physical abuse of her son and that the defendant referred to the child as "chinga boy," "nigger baby," or "little black kid." The defendant asserted that he loved the child and never meant to hurt him; he claimed he only made disparaging comments about the boy's skin color to get back at his girlfriend when she wrongly accused him of infidelity.

After the jury found the defendant guilty of serious bodily injury to a child based on reckless conduct, the trial judge entered a finding pursuant to Article 42.014 that the defendant committed the offense because of racial bias or prejudice. As authorized by Section 12.47, the trial judge enhanced the applicable punishment range to that of a second degree felony, and so instructed the jury. The jury imposed the maximum penalty and a \$10,000 fine. The defendant appealed, arguing that there was no legally sufficient evidence from which the

court could have inferred that he committed the crime because of the child's race.

Because the child was not African-American, one issue was whether the Act applied when the offense was based on the assailant's perception of the victim's race or color, or if the victim actually had to belong to the disfavored group. The court found that the legislative intent of the Act was to allow enhancement of punishment when the assailant acted because of the victim's perceived race or color. The court also found there was sufficient evidence that the defendant's pattern of abuse against the child was based on the defendant's prejudice against African-Americans and his perception that the child was associated with that group.

The court also ruled that under the hate-crime statutes the state must prove a causal connection between the infliction of injury and the assailant's bias or prejudice. If an offender is prejudiced, but that bias was not the primary motivation for the criminal conduct, then the Act cannot be applied. The court held that the state may use reliable circumstantial evidence of the defendant's prejudiced motive, including previous racial epithets directed at the victim, to establish a causal connection. The court found that it could be reasonably inferred from testimony indicating a pattern of abuse based on bias or prejudice that the defendant's criminal act could have been motivated by bias. The evidence of a pattern of abuse was therefore legally sufficient to prove that such bias or prejudice motivated the particular act causing the child's fatal injury.

Survey of Hate Crime Laws in Other States

As of October 1998, 40 states have adopted laws which: specifically criminalize and penalize crimes motivated by certain characteristics of the victim; provide for an enhanced penalty or treat it as an aggravating factor when a criminal offense was motivated by bigotry or bias; or both. All 40 include race or color and religion or creed as characteristics; other characteristics included are:

- **national origin or nationality, 38 states;**
- **ancestry or ethnicity, 22 states;**
- **sexual orientation, 19 states,**
- **disability or handicap, 18 states;**
- **sex or gender, 17 states; and**
- **age, five states.**

Seven states have included additional characteristics in their hate crime laws. Iowa and West Virginia law also covers political affiliation, while Montana adds involvement in civil

or human rights activities. In Nebraska, committing an offense based on a person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, or age is also defined as a hate crime. North Dakota extends the protection of its hate crime law to persons exercising or attempting to exercise a right to full and equal enjoyment of a public facility, and Vermont includes service in the armed forces as a protected characteristic.

One state, Utah, has enacted a statute which specifically refers to hate crimes, but does not define the crime as one motivated by some characteristic of the victim. Under Utah's hate crime law, it is a hate crime for a person to intentionally

intimidate or terrorize another by committing certain offenses with the intent to cause the victim to fear to freely exercise or enjoy any right secured by Utah or federal constitutions or laws.

The chart below summarizes hate crime laws nationwide, setting out the characteristics a state uses in defining a hate crime, and whether the state criminalizes and punishes such behavior as a separate offense, provides for enhanced penalties or treats it as an aggravating factor when the offense was motivated by bias, or does both.

Hate Crime Laws in Other States

Laws in effect through October, 1998

Alabama

Enhanced Penalty: Race, color, religion, national origin, ethnicity, or physical or mental disability (Section 13A-5-13, Alabama Code).

Alaska

Enhanced Penalty: Race, sex, color, creed, physical or mental disability, ancestry, or national origin (Section 12.55.155, Alaska Statutes).

Arizona

Enhanced Penalty: Victim's identity or perceived identity in a group listed in Section 41-1750, subsection A, paragraph 3 (Section 13-702, Arizona Statutes). Section 41-1750 A.3. requires the department of public safety to collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, or disability.

California

Hate Crime: Race, color, religion, ancestry, national origin, disability, gender, or sexual orientation (Section 422.6, Penal Code).

Enhanced Penalty: Race, color, religion, nationality, or country of origin (Section 190.2, Penal Code). Race, color, religion, ancestry, national origin, disability, gender, or sexual orientation (Sections 422.7, 422.75, and 1170.75, Penal Code). Terms of probation (Section 422.95, Penal Code).

Colorado

Hate Crime: Race, color, ancestry, religion, or national origin (Section 18-9-121, Colorado Statutes).

Connecticut

Hate Crime: Race, religion, ethnicity, or sexual orientation (Section 53a-181b, Connecticut Statutes).

Enhanced Penalty: Section 53a-40a, Connecticut Statutes.

Delaware

Enhanced Penalty: Race, religion, color, disability, national origin, or ancestry (Title 11, Section 1304, Delaware Code).

Florida

Enhanced Penalty: Race, color, ancestry, ethnicity, religion, sexual orientation, or national origin (Section 775.085, Florida Statutes).

Idaho

Hate Crime: Race, color, religion, ancestry, or national origin (Sections 18-7901, 18-7902, 18-7903, and 18-7904, Idaho Code).

Illinois

Hate Crime: Race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin (Title 720, Section 5/12-7.1, Illinois Code).

Enhanced Penalty: Title 730, Section 5/5-5-3.2, Illinois Code.

Iowa

Hate Crime: Race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability (Chapter 729A, Iowa Code). Assault in violation of individual rights (Section 708.2C, referencing Section 729A.2).

Enhanced Penalty: Sections 712.9, 716.6A, and 716.8.

Kentucky

Enhanced Penalty: Race, color, religion, sexual orientation, or national origin (HB 455, signed by the governor on April 14, 1998, added a new section to Chapter 532 of the Kentucky Statutes).

Louisiana

Enhanced Penalty: Race, age, gender, religion, color, creed, disability, sexual orientation, national origin, or ancestry (Title 14, Section 107.2, Louisiana Statutes).

Maine

Hate Crime: Harassment based on characteristics (Title 17, Section 2931, Maine Statutes). These characteristics, set out under Title 5, Section 4684-A, are race, color, religion, sex, ancestry, national origin, physical or mental disability, or sexual orientation.

Maryland

Hate Crime: Race, color, religious beliefs, or national origin (Article 27, Section 470A, Maryland Code).

Massachusetts

Hate Crime: Race, color, religion, national origin, sexual orientation, or disability (Chapter 265, Section 39, Massachusetts Laws).

Michigan

Hate Crime: Race, color, religion, gender, or national origin (Section 750.147b, Michigan Laws).

Minnesota

Hate Crime: Race, color, religion, sex, sexual orientation, disability, age, or national origin (Section 609.2231, Minnesota Laws).

Mississippi

Enhanced Penalty: Race, color, ancestry, ethnicity, religion, national origin, or gender (Sections 99-19-301, 99-19-303, 99-19-305, 99-19-307, Mississippi Code).

Missouri

Hate Crime: Race, color, religion, or national origin (Sections 574.090 and 574.093, Missouri Statutes).

Montana

Hate Crime: Race, creed, religion, color, national origin, or involvement in civil rights or human rights activities (Section 45-5-221, Montana Laws).

Enhanced Penalty: Section 45-5-222, Montana Laws.

Nebraska

Enhanced Penalty: Race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability (Section 28-111 of the Nebraska Statutes).

Nevada

Hate Crime: Race, color, religion, national origin, physical or mental disability, or sexual orientation (Section 207.185, Nevada Statutes).

Enhanced Penalty: Sections 193.1675 and 193.169, Nevada Statutes.

New Hampshire

Enhanced Penalty: Religion, race, creed, sexual orientation, national origin, or sex (Section 651.6, New Hampshire Statutes).

New Jersey

Hate Crime: Race, color, religion, gender, handicap, sexual orientation, or ethnicity (Sections 2C:12-1 and 2C:33-4, New Jersey Statutes).

Enhanced Penalty: Sections 43-7 and 2C:44-3, New Jersey Statutes.

New York

Hate Crime: Race, color, religion, or national origin (Sections 240.30 and 240.31, New York Penal Law).

North Carolina

Hate Crime: Race, color, religion, nationality, or country of origin (Section 14-401.14, North Carolina Statutes).

Enhanced Penalty: Race, color, religion, nationality, or country of origin (Section 14-3, North Carolina Statutes).

North Dakota

Hate Crime: Acts based on sex, race, color, religion, or national origin when the person is exercising or attempting to exercise a right to full and equal enjoyment of a public facility (Section 12.1-14.04, Code).

Ohio

Enhanced Penalty: Race, color, religion, or national origin (Section 2927.12, Ohio Code).

Oklahoma

Hate Crime: Race, color, religion, ancestry, national origin, or disability (Section 21-850, Oklahoma Statutes).

Oregon

Hate Crime: Race, color, religion, national origin, or sexual orientation (Sections 166.155 and 166.165, Oregon Statutes).

Pennsylvania

Enhanced Penalty: Race, color, religion, or national origin (Title 18, Section 2710, Pennsylvania Statutes).

Rhode Island

Hate Crime: Race, religion, or national origin (Section 11-42-3, Rhode Island Laws).

South Dakota

Hate Crime: Race, color, religion, ancestry, or national origin (Section 22-19B-1, South Dakota Laws).

Tennessee

Hate Crime: Race, color, ancestry, religion, or national origin (Section 39-17-309, Tennessee Code).

Utah

Hate Crime: Section 76-3-203.3 of the Utah Code is entitled "Penalty for hate crimes — Civil rights violation." This section makes it a third degree felony for a person to commit certain offenses with the intent to intimidate or terrorize another person. The act must be intended to cause a person to fear to freely exercise or enjoy any right secured by the federal or state constitutions or laws.

Vermont

Enhanced Penalty: Race, color, religion, national origin, sex, ancestry, age, service in the U.S. armed forces, handicap, or sexual orientation (Title 13, Section 1455, Vermont Statutes).

Virginia

Hate Crime: Race, religious conviction, color, or national origin (Section 18.2-57, Virginia Code).

Washington

Hate Crime: Race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap (Section 9A.36.080, Washington Code).

West Virginia

Hate Crime: Race, color, religion, ancestry, national origin, political affiliation, or sex (Section 61-6-21, West Virginia Code).

Enhanced Penalty: Same section.

Wisconsin

Enhanced Penalty: Race, religion, color, disability, sexual orientation, national origin, or ancestry (Section 939.645, Wisconsin Statutes).

Hate Crime Laws Update; 1999 Pending Legislation in Other States

Proposed legislation in **Colorado, Idaho, Oklahoma, and Virginia** would add sexual orientation to each state's hate crime laws. Legislation in Colorado also seeks to add physical or mental disability and age and in Oklahoma would include gender as well. In **Montana**, a bill attempting to add sexual orientation to the state's current hate crime laws failed to pass out of committee.

A proposed bill would substantially amend **Utah's** hate crime law by providing that a person who commits certain misdemeanor offenses because of the actual or perceived race, religion, national origin, color, gender, sexual orientation, ethnicity, or mental or physical disability of any person is guilty of a third degree felony. The bill also provides for enhanced penalties if the trier of fact finds beyond a reasonable doubt that the defendant committed a felony offense based on such actual or perceived characteristics of the victim.

In **Hawaii**, there is legislation seeking to establish a temporary commission on hate crimes to investigate whether there is a need for the state to enact hate crime legislation. Another bill would authorize courts to extend terms of imprisonment for certain crimes when the primary motive for the crime was hostility based upon race, sex, sexual orientation, age, religion, color, ancestry or disability. Also, under this bill, if a court grants probation to a defendant convicted of a hate crime, the court must impose certain conditions, such as requiring that the defendant complete a program on racial or ethnic sensitivity.

Pending legislation in **New Mexico** would enhance the penalty when a defendant intentionally injured a person or damaged property because of the actual or perceived race, religion, color, national origin, ancestry, gender or sexual orientation of that person. A similar bill, which has been tabled, would have also included disability. Governor Gary E. Johnson has been reported as vowing to veto any such legislation, asserting that, "All crimes are hate crimes."



Perhaps in response to the notoriety of the murder of Matthew Shepard, there are currently five bills before the **Wyoming** Legislature seeking to create the state's first hate crime law. Three bills provide for enhanced penalties if the defendant intentionally selected the person or property in whole or part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property; two of these also require that the defendant's bias must be considered as an aggravating factor in certain circumstances.

Two other bills both provide for an enhanced penalty when the defendant intentionally selected the person or the property because of the defendant's bias or prejudice against a group. One also provides that for certain crimes, the defendant's bias must be considered as an aggravating factor during sentencing.

—By Sharon Hope Weintraub